

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK.
INDEX NO.: 09 CIV 10459 (JSR)

TERRA FIRMA INVESTMENTS (GP) 2 LIMITED
(for and on behalf of the six limited
partnerships constituting the
Terra Firma Capital Partners II Fund), and
TERRA FIRMA INVESTMENTS (GP) 3 LIMITED
(for and on behalf of Terra Firma Capital
Partners III, L.P.),

Plaintiffs,

v.

CITIGROUP INC., CITYBANK, N.A.,
CITIGROUP GLOBAL MARKETS LIMITED and
CITIGROUP GLOBAL MARKETS INC.,

Defendants.

*** CONFIDENTIAL ***

Monday, July 5, 2010

- - -

VIDEOTAPED deposition of MR. ERIC NICOLI,
taken pursuant to notice, was held at the law
offices of CLYDE & CO LLP, commencing at
09.18 a.m., on the above date, before Melanie Ball,
a Court Reporter.

- - -

MAGNA LEGAL SERVICES
1200 Avenue of the Americas
New York, New York 10036

(866) 624-6221

1 E. NICOLI - CONFIDENTIAL

2 A. Charles Ashcroft.

3 Q. Did you generally find Mr Ashcroft to be
4 accurate in recording those minutes?

5 A. Exceedingly.

6 Q. Mr Ashcroft -- he is somebody who is taken to
7 be very precise?

8 A. Yes.

9 Q. Okay. Now the attendees at this meeting
10 include certain directors including yourself. Correct?

11 A. Yes.

12 Q. And some advisers were in for a piece of the
13 meeting. Correct?

14 A. One adviser.

15 Q. Mr Borrows?

16 A. Yes.

17 Q. Do the minutes reflect Mr Wormsley attending
18 the meeting on April 209?

19 A. No, it does not.

20 Q. Do you remember, do you have a recollection of
21 Mr Wormsley complaining that he was not invited to this
22 meeting?

23 A. I cannot recall if he was unhappy specifically
24 about not attending this meeting. I can recall more
25 generally that he was somewhat unhappy at not being needed

Page 187

1 E. NICOLI - CONFIDENTIAL

2 by them.

3 Q. And that that role had been taken over by
4 Greenhill?

5 A. By Greenhill.

6 Q. Now, sir, does this document, Nicoli
7 exhibit 22, refresh your recollection that Mr Wormsley was
8 not present at the April 20th board meeting discussed in
9 paragraph 100 of the complaint?

10 A. Yes, it does.

11 Q. Would you turn, please to page 7 of these
12 minutes, exhibit 22, Nicoli exhibit 22. Again, you can read
13 any part you'd like but I am focusing on the paragraph --
14 the second full paragraph on page 7. The first sentence
15 begins:

16 "In discussion the board noted that any offer at
17 or above 260p per share would be one the board would have to
18 consider seriously."

19 Do you see that, sir?

20 A. Yes.

21 Q. Good. Is this the meeting, to the best of
22 your recollection, at which the board established a floor
23 for a minimally acceptable bid at 260p?

24 A. Yes, to the best of my recollection. It was
25 an iterative process over several weeks, but this I believe

1 E. NICOLI - CONFIDENTIAL

2 was the board meeting at which it was decided to pursue
3 a process and any bid over 260 would be taken seriously.

4 Q. And from time to time in the course of your
5 answers to Mr Duffy's questions this morning you referred to
6 a floor price or a minimum price. Was that 260p?

7 A. Yes.

8 Q. Would you like look at paragraph 101 of the
9 complaint also referenced in paragraph 9 of your witness
10 statement? This says:

11 "Upon information and belief Mr Nicoli informed
12 Mr Wormsley of the matters discussed at the meeting of EMI
13 Board of Directors in order to enquire whether Terra Firma
14 remained interested in acquiring EMI. Upon information and
15 belief Mr Nicoli kept Mr Wormsley apprised of the amounts
16 of, and provided detailed status reports on, the indications
17 of interest received by EMI, the auction process and of the
18 identity of the bidders."

19 Do you see that, sir?

20 A. Yes.

21 Q. Did you keep Mr Wormsley apprised of and
22 provide detailed status reports on the indications of
23 interest received on EMI?

24 MR DUFFY: Object to form.

25 A. He was a member of the steering committee that

Page 189

1 E. NICOLI - CONFIDENTIAL

2 was later formed. So Mr Wormsley was not singled out for
3 being kept informed. He was one of our retained advisers
4 and clearly in order to perform that function he needed to
5 be aware of who the bidders were and -- and indeed at what
6 level the board would consider pursuing any approach.

7 Q. Did you provide detailed status reports on the
8 bids to Mr Wormsley?

9 A. I didn't provide detailed status reports to
10 anybody. It's possible that status reports were circulated
11 to members of the steering committee.

12 Q. Now was there actually a formal steering
13 committee set up in connection with this process that began
14 in April?

15 A. I can't recall when that committee was set up.

16 Q. Okay, and I think you testified in response to
17 some of Mr Duffy's questions that you recalled a steering
18 committee being established in connection with the Permira
19 bid. Do you recall that?

20 A. Yes.

21 MR DUFFY: Object to form.

22 A. I recall that.

23 MR COHEN: Okay. Was a similar steering committee
24 actually established in the spring of 2007 in the process
25 that Mr Gildersleeve was in charge of as chair of the board.